DOD BREAKOUT
ASAP 2009
FOIA
HOT TOPICS

THESE SLIDES AVAILABLE AT:

http://www.dod.mil/pubs/foi/dfoipo/foia_training_resources.html

Click on:

2009 ASAP DoD Breakout

DOD FOIA HOT TOPICS

- **OPEN Government Act**
  - Sec. 4 - Attorney Fees
  - Sec. 6 – No search fees after 20 days unless unusual circumstances
  - Sec. 7 – Estimated date of completion effective Jan 1, 2009
  - Sec. 8 – Reporting requirements
  - Sec. 10 – Office of Government Information Services
  - Sec. 11 – Report on Personnel Policies

Attorney Fees

- **Agency must pay if complainant determined to have "substantially prevailed"**
- **First DoD assessment**
  - Air Force, OSD
  - Three more in negotiating phase
- **More coming**
  - If sued for not responding – could be interpreted as "a voluntary or unilateral change in position by the agency"
- **Attention getter**

Attorney Fees

- **"How do we avoid getting sued?"**
  - Likely to be asked this question
  - Answer is get requests done faster
  - Sometimes we can't

- **Use Sec 4 as motivation to components for not sitting on requests**

No Search Fees (Estimated Date of Completion)

- **No search (or duplication) fees after 20 days unless:**
  - Unusual or exceptional circumstances as defined in the FOIA

- **Beginning January 1, 2009, must have internet or telephone capability to provide an estimated date of completion for FOIA requests received on or after that date**

Reporting Requirements

- **Defense Freedom of Information Policy Office (DFOIPO) forwarded guidance**
  - FY 08 – Only so much we can do
- **FY 09 – Additional requirements DFOIPO guidance ongoing**

Office of Government Information Services

- **New office established in NARA but not operational**
  - Review policies
  - Review compliance
  - Recommend policy changes to Congress
  - Offer Mediation Services
    - *Intended as alternative to litigation*
    - *May issue advisory opinions if mediation did resolve the dispute*
- **Director, OGIS position advertised**

OPM Report on FOIA/PA Personnel Policies

- **OPM completed Report December 16, 2008**

- **Examined :**
  - Need for FOIA/PA job series, FOIA/PA career track, minimum rate of pay for high level officials administering FOIA and PA programs
  - Need for adherence to FOIA in performance evaluations of federal employees, all federal employees to take FOIA/PA awareness training

- **DFOIPO forwarded Report to DoD FOIA Components**

What's Hot – Other Than OPEN Gov't Act

- Suing us sooner
- Backlog Reduction
- FOIA Websites
- Searches
- Transparency

Other Hot Issues

- **Suing us sooner**
  - Some instances of 4-6 weeks after request in instances of non-response
  - Going in court on administrative issues such as requests for expedited processing
- **Backlog Reduction**
  - Anticipated movement back to front burner after completion of annual reports
  - Expect continued monitoring of progress from DFOIPO

Other Hot Issues

- **FOIA Websites**
  - High interest
  - Expect more monitoring from DFOIPO

- **Searches - HOT HOT HOT**
  - Agencies ordered to explain how they searched
  - Declarations must be specific
  - Importance of administrative record